IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Crl.MC.No. 2204 of 2007()

CMP.1321/2007 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE
CRIME NO.51/2007 OF PANNIYANKARA
POLICE, KOZHIKODE

.....

PETITIONER: ACCUSED

C.P.MUSTHAFA, S/O. C.P.HOUSE,
AGED 48 YEARS, CHAKKUMKADAVU, ANAMEDU,
NADINAGAR, P.O.KALLAI, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2204 of 2007

Dated this the 4th day of September 2007

O R D E R

The petitioner faces allegations under Section 377 I.P.C. He was granted bail by the learned Chief Judicial Magistrate as per order dated 25/4/2007 subject to conditions. He was thus released from custody. The grant of bail was subject to the condition that the petitioner shall not directly or indirectly influence the witnesses. A report was filed before the learned Chief Judicial Magistrate that the said condition has been breached. On the application by the investigating officer, the learned Magistrate issued notice to the petitioner. Notice was not served personally on the petitioner. It was served on the learned counsel for the petitioner; but there was no appearance. In these circumstances, the impugned order dated 22/5/2007 was passed cancelling the bail and issuing non-bailable warrant to procure the presence of the petitioner.

2. The petitioner has come to this court with the grievance that he has not been served properly or heard before

the impugned order was passed by the learned Chief Judicial Magistrate. According to the petitioner, he has not committed breach of any condition. Without and before hearing him, a decision has been taken that he has committed breach of the conditions of the bond. This is not proper. The learned counsel for the petitioner prays that an opportunity may be granted to the petitioner to appear before the learned Magistrate and raise his objections against the prayer made in C.M.P.No.1321/07. A fresh order may be directed to be passed after hearing the petitioner.

3. Having considered all the relevant inputs and having gone through the impugned order dated 22/5/2007 in detail, I am satisfied that the prayer of the petitioner can be allowed. Appropriate safeguards can also be insisted.

4. In the result, this petition is allowed. The impugned order - the order dated 22/5/2007 in C.M.P.No.1321/07 passed by the learned Chief Judicial Magistrate, Kozhikode, is set aside. The learned Chief Judicial Magistrate is directed to pass orders afresh in C.M.P.No.1321/07 after hearing the petitioner. The petitioner shall be at liberty to appear before the learned

Magistrate on 10/09/2007 along with a copy of this order. He shall be permitted to raise all his contentions against the prayer made in C.M.P.No.1321/07. After hearing the petitioner and the learned Public Prosecutor, appropriate orders shall be passed by the learned Chief Judicial Magistrate on or after 10/09/2007. Considering the nature of the grievances raised by the investigating officer against the petitioner, there shall be a further direction that the petitioner shall not enter the jurisdiction of Panniyankara police station until further orders.

5. Issue copy of the order to the learned counsel for the petitioner forthwith and communicate this order to the learned Magistrate immediately.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007